

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>vs.</b>	)	<b>CRIMINAL ACTION NO. 12-0242-KD</b>
	)	
<b>ERVIN SYLVESTER ADAMS,</b>	)	
	)	
<b>Defendant.</b>	)	

**ORDER**

This action is before the Court on the United States’ Motion to Continue Trial Term (doc. 14). The United States seeks a continuance of the trial on grounds that a superseding indictment that adds a conspiracy charge and an additional defendant is anticipated.<sup>1</sup> Adams states that he has no objection to the motion in that he will need more time to prepare for the additional charges against him as well as the addition of a new defendant.

Title 18 U.S.C. §3161 (h)(7) provides for a reasonable period of delay under certain circumstances in multi-defendant cases. The statute provides, in pertinent part as follows:

(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

**(6)** A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

18 U.S.C. §3161(h)(6).

“Congress stressed that ‘the purpose of the provision is to make sure that [the Speedy Trial Act] does not alter the present rules on severance of co-defendants by forcing the [g]overnment to prosecute the first defendant separately or to be subject to a speedy trial

dismissal motion under section 3162.”’ *United States v. Varella*, 692 F.2d 1352, 1359 (11<sup>th</sup> Cir. 1982). Therefore, the Court finds that the ends of justice served by continuing this action outweigh the best interest of the public and the defendant in a speedy trial. For purposes of the Speedy Trial Act, any delay resulting from this continuance is excludable pursuant to 18 U.S.C. § 3161(h)(6). Accordingly, the motion to continue trial (doc. 14) is **GRANTED** and this case is continued to the **March 2013** criminal trial term with jury selection to be held on **Monday, March 4, 2013**.

The Clerk of the Court is directed to refer this action to the appropriate United States Magistrate Judge to reschedule the pretrial conference.

**DONE** and **ORDERED** this the 31st day of January, 2013.

/s / Kristi K. DuBose  
**KRISTI K. DuBOSE**  
**UNITED STATES DISTRICT JUDGE**

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<sup>1</sup> After the motion was filed, the United States notified the Court that Adams had been indicted in the superseding indictment. (*See* doc. 14, n.1, stating that the United States would notify the Court as to the results of the Grand Jury).